

MARILYN JAMES,)
)
 Plaintiff,)
)
 v.) **NO. 09-CV-957-WDS**
)
 CITY OF CARBONDALE, an Illinois)
 municipal corporation,)
)
 Defendant.)

STIEHL, District Judge:

Disparate treatment claims require a showing of intent – “the plaintiff must demonstrate deliberate discrimination within the limitations period.” *Lewis v. City of Chicago, Ill.*, 130 S. Ct. 2191, 2194 (2010). To establish a disparate impact claim, which Count III seeks to allege, plaintiff must make a showing “that the employer ‘uses a particular employment practice that causes a disparate impact’ on one of the prohibited bases.” *Id.* at 2197-98 (citing *Ricci v. DeStefano*, 129 St. Ct. 2658, 2672-73 (2009)). Because plaintiff’s claim in Count III is based upon her claim that was

actively discriminatory, keeping a particular class of individuals (African-Americans) in lower-level classifications with lower level salaries is an act of intentional discrimination, which would be a disparate treatment claim. Count I of the First Amended Complaint alleges disparate treatment based on intentional decisions, and therefore, Count III, is, as currently framed, the same as the claim in Count I.

Accordingly, the Court **GRANTS** defendant's motion to dismiss Count III of the First Amended Complaint, and it is **DISMISSED**. Plaintiff may seek leave to file a Second Amended Complaint, including a properly pleaded disparate impact claim within fourteen (14) days of the date of this Order.

IT IS SO ORDERED.

DATE: 3 August, 2011

/s/ WILLIAM D. STIEHL
DISTRICT JUDGE